

Basis for Amendments to Claims

The Applicants have made minor amendments to independent Claims 1 and 34 to correct the description of the "tubular casing" of the desiccant container. In an earlier filed amendment to the claims, this "tubular casing" was improperly referred to as a "tubular housing". The amendments to the claims correct this inadvertent error.

No new subject matter is introduced by these amendments to the claims.

Discussion

In an Office Action dated November 10, 2008, the USPTO rejected Claims 1 - 17, 19, 20 and 23 - 35 under 35 U.S.C. § 112, second paragraph, as being indefinite. The amendments to Claims 1 and 34 overcome this rejection and the Applicants request that this rejection be withdrawn.

The USPTO also rejected Claims 1 - 17, 19, 20, 22 - 23, 34 and 35 under 35 U.S.C. §103 as being unpatentable over Hekal (EP 0 824 480) in view of Simpson, et al., U.S. Patent No. 6,000,550. The USPTO also rejected Claims 32 and 33 under 35 U.S.C. § 103 as being unpatentable over Hekal in view of Simpson, et al. as applied to Claim 1, and further in view of Taskis, et al., U.S. Patent No. 5,947,274. The Applicants respectfully traverse these rejections and request that the USPTO consider the following comments.

The invention relates to an unique desiccant container made particularly tight with respect to moisture and designed for the packaging of products sensitive to ambient moisture. The desiccant container utilizes an unique sealing system to seal the cap-lid to the tubular casing. The unique sealing system creates at least four tightness barriers that are formed between the cap-lid and the tubular casing. These four tightness barriers are discussed on page 26, line 1 through page 27, line 21. This level of tightness is unique and results

from the specific structure of the Applicants' desiccant container. To enhance this tightness between the tubular casing and the cap-lid, the cap-lid contains a unique structure, which is claimed in all claims of the application. Further, the connection system between the tubular casing and the cap-lid comprises a uniquely designed, mechanical hinge formed from a male part, incorporated into the tubular casing, and a female part, incorporated into the cap-lid. The male part and the female part each have unique features which are claimed in all claims of the application and which enhance the tightness of the seal between the tubular casing and the cap-lid when in a closed position. The structure, as claimed, is not disclosed by any of the prior art.

Hekal and Simpson, et al.

The primary reference cited against the patentability of the claims of the Application is Hekal. In fact, the scope and focus of Hekal are distinct from that of the Applicants' claimed container. The disclosure of EP 0 824 480 is focused on the composition of the container and not its structure. Note throughout the specification of EP 0 824 480 the failure of Hekal to describe the precise structure of the components of his container.

In the Office Action the USPTO asserts that the structure of the sealing means, as claimed by Applicants, is disclosed by

EP 0 824 480. The Office Action specifically references a disclosure of an inner wall 74, outer wall 87, and other features of the container that are disclosed in the figures attached to EP 0 824 480. However, the written specification of EP 0 824 480 fails to describe the purpose or operation of these components at any location within EP 0 824 480. The disclosures made by Figure 1 of EP 0 824 480 may suggest certain structural features that might be useful for the forming of a container. However, the written specification fails to describe with clarity and the required specificity the exact structure that is disclosed in the container of Figure 1. In fact, the written specification is silent as to many of the features that are shown in the drawings attached thereto. A person skilled in the art would not be taught by EP 0 824 480 to produce a container with the features specifically described and claimed by Applicants.

The USPTO also asserts that Simpson, et al., when combined with Hekal, teach the hinge portion of the Applicants' claimed desiccant container. The Applicants respectfully traverse this combination.

The USPTO combined two references which are clearly non-related. Hekal discloses the composition of small desiccant containers. In contrast, Simpson, et al. disclose a large box, which is used for storing and shipping of semi-conductor wafer

containers and boxes. The purpose of the box is to prevent the breakage of the semi-conductor components that are present in the box. There is no relationship between the box that is disclosed in Simpson, et al., which is quite large and complex in structure, and the desiccant container that is mass produced and is disclosed in Hekal or claimed in the Application. No person skilled in the art reviewing Hekal would be taught to look to boxes of the type disclosed by Simpson, et al.

In fact, the simple hinge design, that is disclosed by Hekal, teaches away from the two hinged, multicomponent system disclosed by Simpson, et al.

The USPTO has previously determined that obviousness can not be present when the primary prior art teaches away from the secondary art that has been combined therewith. In making this determination, the USPTO recognized the obviousness rational which was adopted by KSR Int'l Co. v. Teleflex, Inc., 127 F.Ct. 1727, 1741 (2007). KRS noted that obviousness can not be proven merely by showing that the elements of the claimed device were simply known in the prior art. Rather, as stated by the USPTO in Ex Parte Whalen, 89 USPQ 2d 1078, 1084 (2008),

...it must be shown that those of ordinary skill in the art would have had some "apparent reason to combine the known elements in the fashion claimed".

Ex Parte Whelan further states that,

...obviousness can not be proven merely by showing that a known composition could have been modified by routine experimentation or solely on the expectation of success; it must be shown that those of ordinary skill in the art would have some apparent reason to modify the known composition in a way that would result in the claimed composition.

It is clear that no such "apparent reason" exists for modifying the known, simple, mass produced hinge that was utilized by Hekal with the totally unrelated, multicomponent hinge that is disclosed in Simpson, et al. In fact, Hekal teaches that the use of his simple hinge is preferable because all components of his system are made of the same material in a single injection molding process. (See paragraph 0011 of Hekal) Further, because all components of the container of Hekal are formed from this same desiccant entrained thermoplastic material, it is critical that the container be produced in a one step injection molded system. In addition, the Hekal container is mass produced. Thus, a person skilled in the art reviewing Hekal would not be taught to consider a hinge systems formed of at least dual-or multi-components, such as is necessary to produce the more complicated container that is disclosed by Simpson, et al.

Further, even if Simpson, et al. is considered, there are structural differences which are clear between the hinge system, as claimed in the claims of the Application, and those disclosed by Simpson, et al. For example, all claims of the Application require that the outer wall of the peripheral groove be rendered discontinuous by notches formed to house the bracket plates. In addition, there is no suggestion that the system of Simpson, et al., even if combined with Hekal, would produce a container of the type claimed by Applicants which includes specifically the four surface-to-surface tight and peripheral contacts, which enhance the ability of the Applicants' container to remain firmly and securely closed. The Applicants' system is not disclosed by Simpson, et al.

For all of these reasons the combination of Hekal with Simpson, et al. does not teach any of the claims of the application, as amended.

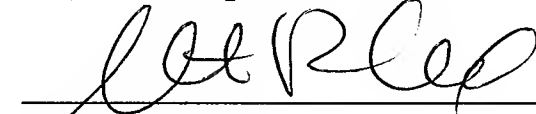
Hekal, Simpson, et al. and Taskis, et al.

The USPTO added the teaching of Taskis, et al. to that of Hekal and Simpson, et al. However, because the addition of Taskis, et al. was added merely to teach the composition of the desiccant agent used by the Applicant, this disclosure does not overcome the deficiencies in the teachings of the structure of the container itself. Thus, the addition of Taskis, et al. does not obviate the failures of Hekal and Simpson, et al.

CONCLUSION

The Applicants believe that the claims, as amended, are distinctive over the cited prior art and request review and allowance by the USPTO. If there are any questions, please contact the Applicants' counsel.

Respectfully submitted,



Scott R. Cox
Reg. No. 31,945
Customer No. 68072
LYNCH, COX, GILMAN & MAHAN, P.S.C.
500 West Jefferson Street, Ste 2100
Louisville, Kentucky 40202
(502) 589-4215

Dated: February 10, 2009

CERTIFICATE OF EFS SUBMISSION (37 C.F.R. § 1.8(a)(1)(C))

I hereby certify that, on the date shown below, this correspondence is being submitted to the Patent and Trademark Office via the Office Electronic Filing System in accordance with § 1.6(a)(4).

Date: February 10, 2009


Signature

SRC:hh
R:\Patents\p1451\P1451RCEPreliminaryAmendment.doc
108309.14510
02/10/2009